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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,144	04/13/2004	Vincent A. Piucci JR.	D-20121-02	4529

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CRYOVAC, INC.  
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EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

51

<b>Office Action Summary</b>	Application No. 10/823,144	Applicant(s) PIUCCI ET AL	
	Examiner John Sipos	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/13/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

### ***DOUBLE PATENTING***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/760,189 in view of Sperry (6,283,174). Claims 1-20 of the copending application set forth substantially the same product dispenser as recited in the claims of the instant application. The claims of the copending application lack the mechanisms relating to the packaging machine. The patent to Sperry shows the use of a dispenser in combination with a packaging machine that comprises a mechanism 44 that conveys two films in opposing relationship to define a one or more of flexible containers with the dispenser being positioned between the webs and a device 46 for sealing the film webs together to enclose the product. It would have been obvious to one skilled in the art to provide the mechanism set forth in the claims of the copending application with packaging mechanisms as shown by Sperry to contain the product.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

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***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sperry et al. (5,996,848) in view of Sperry (6,283,174) or Sperry et al. (5,255,847) or in the alternative Sperry (6,283,174) or Sperry et al. (5,255,847) in view of Sperry et al. (5,996,848).

Sperry '848 discloses a fluid dispenser comprising:

a housing 148 defining an internal chamber 188, and the housing comprising: an inlet 172 or 174 for receiving a fluid product into the housing and being in fluid communication with the internal chamber, and a discharge port 153 through which fluid product may exit the housing, and the discharge port being in fluid communication with the internal chamber; and

a valving rod 218, 268 disposed in the housing and being movable within the internal chamber between an open position, in which fluid product may flow through the internal chamber and exit the housing via the discharge port, and a closed position, in

which fluid product is substantially prevented from flowing through the internal chamber (figures 28 & 29), the valving rod comprising:

a central bore 230, at least one inlet 256 for receiving a cleaning solvent, the inlet being in fluid communication with the bore, and one or more outlet ports 234, 236 in fluid communication with the bore, the outlet ports being capable of directing cleaning solvent radially from the bore and against the interior surface bounding the internal chamber to facilitate the removal of at least a portion of any fluid product or derivatives thereof that may be in adherence with the interior surface (figure 28 & column 37, lines 12-15).

Sperry '848 further discloses the housing has a longitudinal axis; the bore of the valving rod is substantially aligned with the longitudinal axis; and the valving rod translates between the open and closed positions along the longitudinal axis (figures 25, 27, 28A & 29); & 29); the discharge port has an interior surface that defines part of the internal chamber of the housing; and the valving rod is adapted to direct cleaning solvent against the interior surface of the discharge port when the valving rod is in the closed position (column 35, lines 42-53); the housing further comprises an internal reservoir 200 (and the space between 290 and 220) in which cleaning solvent may be contained, the internal reservoir being in fluid communication with the at least one inlet into the central bore of the valving rod (figure 28); a portion of the valving rod is movable through the internal reservoir (figures 25, 27, 28 & 29); the housing has at least one inlet 166 (figure 9) in fluid communication with the internal reservoir so that cleaning solvent from an external source may be added to the reservoir as needed (column 38, lines 67

& column 39, lines 1-3); the dispenser is adapted to dispense a fluid product selected from polyols, isocyanates, and mixtures of polyols and isocyanates (column 1, lines 32-44); and the cleaning solvent is selected from glycols, ethers, and mixtures of glycols and ethers (column 36, lines 12-16 & lines 26-30).

Each of the patents to Sperry (174) and (847) shows the use of a dispenser in combination with a packaging machine that comprises a mechanism that conveys two film in opposing relationship to define a one or more of flexible containers with the dispenser being positioned between the webs and a device for sealing the film webs together to enclose the product.

It would have been obvious to one skilled in the art to provide the dispenser of Sperry (848) with packaging mechanisms as shown by either Sperry (174) or (847) to contain the product.

Alternatively, since the Sperry '848 dispenser provides a system that puts out a precise and consistent amount of high quality foam, preventing the obstruction of any chemical to the inlet port, and avoiding any degrading foam precursor build up in general (column 6, lines 51-57), it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify either the Sperry 174 or 847 packaging system by substituting the improved dispenser of Sperry '848 with the higher out puts, reliable and requires less maintenance system for the dispenser of Sperry 174 or 847.

Regarding claims 12 and 16, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to apply a desired pressure

and a desired mixing ratio to insure that a sufficient pressure and mix is used. It is merely a matter of experimentation to arrive at an optimum desired range.

Regarding claim 13, the controlling of a delivery system in response to pressure in the system is well known in the art and the Examiner takes official notice that it is common knowledge in the packaging/dispensing art. It would have been obvious to one skilled in the art to provide such a control to ensure proper and desired pressure within the system.

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Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholle (3,926,229) in view of Sperry (6,283,174) or in the alternatively Sperry (6,283,174) in view of Scholle (3,926,229). The patent to Scholle shows a fluid dispenser, comprising: a housing defining an internal chamber bounded by an interior surface within said housing, said housing comprising: (1) an inlet 14 for receiving a fluid product into said housing and being in fluid communication with said internal chamber, and (2) a discharge port 12 through which fluid product may exit said housing, said discharge port being in fluid communication with said internal chamber; a valving rod 20 disposed in said housing and being movable within said internal chamber between an open position, in which fluid product may flow through said internal chamber and exit said housing via said discharge port, and a closed position, in which fluid product is substantially prevented from flowing through said internal chamber, said valving rod comprising: (1) a central bore 52, (2) at least one inlet (top of rod) for receiving a cleaning solvent, said inlet being in fluid communication with said bore, and (3) one or

more outlet ports 54 in fluid communication with said bore, said outlet ports being capable of directing cleaning solvent radially outwards from said bore and against said interior surface bounding said internal chamber to facilitate the removal of at least a portion of any fluid product or derivatives thereof that may be in adherence with said interior surface. The patent to Scholle lacks the mechanisms relating to the packaging machine. The patent to Sperry shows the use of a dispenser in combination with a packaging machine that comprises a mechanism 44 that conveys two films in opposing relationship to define a one or more of flexible containers with the dispenser being positioned between the webs and a device 46 for sealing the film webs together to enclose the product. It would have been obvious to one skilled in the art to provide the mechanism set forth in Scholle with packaging mechanisms as shown by Sperry to contain the product.

Alternatively, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify the Sperry packaging system by substituting the improved dispenser of Scholle for the dispenser of Sperry.

Regarding claim, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to apply a desired pressure to insure that a sufficient pressure is used. It is merely a matter of experimentation to arrive at an optimum desired range.

Regarding claim 13, the controlling of a delivery system in response to pressure in the system is well known in the art and the Examiner takes official notice that it is common knowledge in the packaging/dispensing art. It would have been obvious to one



skilled in the art to provide such a control to ensure proper and desired pressure within the system.

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### ***ADDITIONAL REFERENCES CITED***

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The cited art shows packaging systems using a dispenser between opposing webs to form packages.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

Application/Control Number: 10/823,144  
Art Unit: 3721

Page 9

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.



**John Sipos**  
Primary Examiner  
Art Unit 3721

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